

REPORT OF THE COMMITTEE ON ZONING, PLANNING AND HOUSING

Voting Members:

Ron Menor, Chair; Tommy Waters, Vice-Chair;
Brandon J.C. Elefante, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
June 18, 2020

Honorable Ikaika Anderson
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, Planning and Housing, which considered Bill 42 (2020) entitled:

"A BILL FOR AN ORDINANCE RELATING TO BUILDING PERMIT APPLICATIONS,"

introduced on May 6, 2020, and which passed First Reading at the May 20, 2020 Council meeting, reports as follows:

The purpose of Bill 42 (2020) is to require applicants obtaining building permits for residential structures to attest that the construction complies with all restrictive covenants for the land on which the proposed work is to be done.

At your Committee's meeting on June 18, 2020, the Deputy Director of Department of Planning and Permitting ("DPP") testified that the DPP has concerns the language of the bill may be overly broad and have unintended consequences.

Your Committee received written testimony in support of the Bill from the Aina Haina Community Association and one individual. Written testimony in opposition to the Bill was received from the BIA Hawaii. DR Horton Hawaii submitted comments on the Bill.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **JUL 8 2020**

COMMITTEE REPORT NO. **156**

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Your Committee prepared a CD1 version of the Bill that makes the following amendments:

- A. In the findings and intent provisions of SECTION 1 of the Bill, and in proposed new ROH Section 18-4.1(j), requires that a building permit application for a residential dwelling be accompanied by a duly notarized affidavit (instead of an attestation) executed by a person with a proprietary interest in the subject property (instead of the applicant and the property owner), stating that the proposed construction will comply with all applicable restrictive covenants.
- B. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Zoning, Planning and Housing is in accord with the intent and purpose of Bill 42 (2020), as amended herein, and recommends that it pass second reading, be scheduled for a public hearing, and be referred back to Committee in the form attached hereto as Bill 42 (2020), CD1. (Ayes: Elefante, Kobayashi, Manahan, Menor, Waters – 5; Ayes with reservations: None; Noes: None.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON JUL 8 2020

COMMITTEE REPORT NO. 156



A BILL FOR AN ORDINANCE

RELATING TO BUILDING PERMIT APPLICATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose, findings, and intent.

The purpose of this ordinance is to require applicants for building permits for residential structures to attest that the construction complies with all restrictive covenants for the land on which the proposed work is to be done.

There have been instances in the City where the construction of residential dwellings has not complied with underlying restrictive covenants. While violations of restrictive covenants are generally a private matter, the construction of such noncompliant dwellings may result in negative impacts, such as excessive bulk or an increased number of dwelling units, which adversely affect the surrounding neighborhood and raise concerns among area residents. This ordinance therefore requires that a building permit application for a residential dwelling be accompanied by a duly notarized affidavit executed by a person with a proprietary interest in the subject property, stating that the proposed construction will comply with all applicable restrictive covenants. False attestations would be subject to existing administrative and criminal remedies for violating the requirements under which a building permit was issued. The Director of Planning and Permitting may also begin proceedings to suspend or revoke the building permit if it was issued on the basis of supplied incorrect information.

SECTION 2. Section 18-4.1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 18-4.1 Application.

To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished for that purpose by the building official. Every ~~[such]~~ application ~~[shall]~~ must:

- (a) Identify and describe the work to be covered by the permit for which application is made, including a list of each and every phase of electrical and plumbing work;
- (b) Describe the land on which the proposed work is to be done, by tax map key number, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work;



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- (c) Indicate the use or occupancy for which the proposed work is intended;
- (d) Be accompanied by plans, specifications, calculations, and construction inspection requirements as required in Section 18-4.2;
- (e) State the valuation of the proposed work;
- (f) Provide the name and license of all specialty contractors involved in the project, in compliance with the provisions of HRS Chapter 444;
- (g) State the following information for each contractor or subcontractor engaged to do electrical or plumbing work upon the building, structure, or project:
 - (1) Name;
 - (2) Address;
 - (3) Contractor's license number; and
 - (4) Particular phase or phases of work to be performed;
- (h) Be signed by the responsible managing employee or authorized employee of each contractor designated in subsection (g);
- (i) For applications contemplating the demolition of any building constructed as a residential dwelling and occupied in any habitable unit thereof, be accompanied by a duly notarized affidavit stating that the applicant has a proprietary interest in the subject property or has the written authorization of a person or entity with a proprietary interest in the subject property to submit the application. If the interest of the applicant or of the person or entity authorizing the applicant to submit the application is not a fee simple interest in the property, the affidavit ~~[shall]~~ must state the nature and the remaining term of the interest.

For purposes of this subsection, a person or entity has a "proprietary interest" if the person or entity has the right of control and dominion of the property being demolished, and a person or entity has "right of control and dominion" if the person or entity holds, possesses, and retains control of 51 percent or more of the property interest. If a person or entity holds, possesses, and retains less than 51 percent of the property interest, other persons or entities with an interest in the property ~~[(up to the 51 percent)]~~ must consent to the demolition of the building, such that the combined interests of the person or entity claiming the



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right of control and dominion and of the consenting persons or entities equal or exceed 51 percent; [and]

- (i) For applications for the construction of a residential dwelling, be accompanied by a duly notarized affidavit executed by a person with a proprietary interest in the subject property, stating that the construction complies with all restrictive covenants applicable to the land on which the proposed work is to be done; and
- ~~(j)~~(k) Give such other information as reasonably may be required by the building official. If the application proposes excavation and backfill work that does not require a grading permit under Section 14-13.5(b), the building official, if deemed necessary to protect or promote public safety, may require the submittal of an engineering slope hazard report. ~~[Such a]~~ An engineering slope hazard report means the same as defined under Section 14-13.3. The report shall have the same information as that required for an engineering slope hazard report under Section 14-14.2(d)(2)."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



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SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ikaika Anderson

Tommy Waters

DATE OF INTRODUCTION:

May 6, 2020
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu